

1419567 (Refugee) [2016] AATA 3862 (12 May 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
CASE NUMBER:	1419567
COUNTRY OF REFERENCE:	India
MEMBER:	James Jolliffe
DATE:	12 May 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection visa.

Statement made on 12 May 2016 at 8:55am

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431 of the Migration Act 1958 and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of India , applied for the visa [in] April 2014 and the delegate refused to grant the visa [in] November 2014.
3. The applicant appeared before the Tribunal on 28 April 2016 to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's wife [name].
4. Relevant Law
5. The criteria for a protection visa are set out in s.36 of the Act and Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa of the same class.
6. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
7. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
8. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
9. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration – PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for

protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CLAIMS AND EVIDENCE

10. The Tribunal has before it the department and Tribunal files relating to the applicant as well as relevant information from a variety of sources.
11. The issue in this case is that the applicant claims to fear harm if he returned to India on the basis that he claims he married a woman of the Muslim faith and he claims to be of the Sikh faith.
12. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed
13. In his protection Visa application the applicant claimed that he had been born on [date] in [his home town in] [City 1] in the Punjab in India. He claimed to be of the Sikh religion and he claimed to be in a de facto relationship which he said commenced in August 2012. He claimed to have been previously married and divorced in Australia. He claimed that he was divorced [in] July 2013. He claimed to have no right to enter or reside temporarily or permanently in any other country apart from India. He claimed to have arrived in Australia in October 2008 on a student Visa. He claimed to have been issued with an Indian passport in [2007]. In his protection Visa application he referred to his parents in India being against his relationship in Australia and that many community people threaten his relationship. He said that his parents now know "she is Muslim so they are against it". He claimed that he was scared of being killed and victimised and being attacked if he returned to India and he claimed that he was at risk in India because of the mentality of people and at risk from corrupt police and corrupt ministers and bad people. He claimed in the application that his de facto partner was also at risk and that they would be definitely discriminated against and referred to there being a "lot of Hindu/Muslim riots". He claimed he would not be protected in India and referred to "honour killings" and that the police and authorities were unable to stop those. He claimed he and his partner could not live peacefully in India and there were too many "Hindu/Muslim problems in India". He referred to a number of media articles in support of his claims.
14. Several media articles were provided in support of the application and in summary there was the cover page of an article entitled "India's crying shame" which referred to an article dated 28 November 2013 referring to the conviction of a couple for a double murder in relation to an honour killing. The media articles also included a report dated February 8, 2014 referring to the Muslim boyfriend of a Muslim girl being beheaded by the girl's family and that the girl had also disappeared and this was said to be an honour killing. Another article refers to the death of an Indian IT engineer being killed in an honour killing because her parents disagreed with her marriage to her low cast boyfriend. Another article dated September 2013 referred to another honour killing where a man was beheaded and the woman was beaten to death by the woman's family after they had eloped. That media article refers to members of the family having been arrested by police after the deaths. That article also refers to the Indian Supreme Court stating that in 2010 that the death penalty should be given to those found guilty of honour killings in India.
15. The applicant was interviewed by Department delegate in November 2014 in relation to his protection Visa application. The delegate declined to grant the applicant a protection Visa and was not satisfied that the applicant was entitled to protection in Australia. A copy of the delegate's decision record was provided with the application for a review.
16. TRIBUNAL HEARING

17. The applicant appeared before the Tribunal on 28 April 2016 to give evidence and present arguments. The applicant was not represented at the hearing before the Tribunal. An interpreter was present during the hearing but most of the hearing was conducted in the English language and the applicant only occasionally made use of the Punjabi interpreter when it was necessary to clarify a question or to clarify his answer in responding to a Tribunal question.
18. As indicated the Tribunal received evidence from the applicant's wife. That evidence was received in the English language. In summary she told the Tribunal that she met the applicant in Australia when she had been previously married to the applicant's brother. The applicant at the time had been married to his first wife. The two families lived together in Australia. The witness told the Tribunal that she met the applicant around 2012 and that she became divorced from her first husband in 2013. The Tribunal was provided with documentation from the family Court of Australia in relation to the applicant and his wife's respective divorces. The Tribunal was also provided with a marriage certificate and the registration of that marriage with the New South Wales Registrar General. That documentation indicated that the applicant and his wife had been married [in] March 2015. The witness told the Tribunal that she and the applicant had married in a Sikh ceremony in India [in] February 2014. She said that ceremony had been conducted in a Sikh temple. She confirmed to the Tribunal that marriage had not been registered with civil authorities in India. There was no documentation that could be provided to the Tribunal in relation to that ceremony but the Tribunal was provided with one photo of the applicant and his wife which she said was taken at the time of the marriage ceremony in India. The witness told the Tribunal that she was of the Sunni Muslim faith and that she practised her religion but she said she was neither strict nor extreme in the practice of her religion.
19. The Tribunal asked the witness about what happened after the wedding ceremony in India. She told the Tribunal that the applicant's parents in family had not been told that she was of the Muslim faith when the marriage ceremony had occurred. She said that she and her husband then discussed telling the applicant's family and that conversation occurred when the applicant and his wife was staying with the applicant's parents in the applicant's home village in [Village 1] The witness said that she wanted the applicant's family to know that she was a Muslim. The family thought that the witness was a Sikh. There was a discussion about registering the marriage with civil authorities in India. The witness said that her husband had been threatened by her father in law after the applicant's parents were told that the witness was a Muslim and words to the effect were said by the father in law to the applicant "you change her or you will pay the price." The witness said she understood that that was a threat that her husband would be killed. The witness said that her father-in-law had said to her that she had lied and that the family would not accept the marriage and that her father-in-law had said words to the effect "intercast marriages are not acceptable". She said that she saw her father-in-law slap her husband on the face. She said her husband told her "that it's not going to work and we have to leave". The witness said she had become upset and was frightened at the events and had returned to her bedroom after this incident. She told the Tribunal that she also understood during the conversation with the family that from the words that were spoken she would be harmed. She told the Tribunal that she and her husband then left the family home and went to stay for a few days with a distant relative of her husband.
20. The Tribunal asked why the marriage in India had not been registered with civil authorities and the witness said that she had been depressed and scared after the marriage and after the encounter with the applicant's family. She said that she and her husband also needed her parents in law as witnesses to get the marriage registered in India and that after the encounter with the parents-in-law this was not possible.

21. The Tribunal noted that the applicant and the witness had returned to Australia [in] March 2014. The Tribunal noted that the applicant and the witness had then not married in Australia until March 2015 and asked the witness about the delay in marrying in Australia. She told the Tribunal that she was depressed when she returned to Australia and thought that the applicant's partner Visa would be sufficient to protect his situation in terms of being in Australia. She regarded herself as being married as a result of the ceremony in India and she had an ongoing relationship with the applicant. The Tribunal raised a concern about the delay in the applicant and the witness marrying in Australia and referred to the applicant's migration history in Australia. The Tribunal raised a concern that the witness and the applicant had clearly decided to commit to a marriage when they went to India and in those circumstances the Tribunal was concerned as to why that commitment was not replicated in Australia by a marriage between the two of them sooner than March 2015. The witness said that she had been depressed and also had issues with her family in Australia because her parents would not accept the applicant because he was not a Muslim.
22. The Tribunal was subsequently also told that the witness was keen to have her parents attend any marriage ceremony in Australia and that had also delayed the marriage in Australia between the applicant and the witness. The witness's parents did not attend the marriage ceremony in Australia. The witness told the Tribunal that she thought her husband would be killed if he returned to India because of his marriage to her. She was asked why the incident involving her husband and her and his parents was not reported to the police in India. She said that she had discussed reporting it to the police with her husband but that her husband did not trust the police and they decided not to report it. The witness said that she believed the police in India were corrupt. The witness told the Tribunal that she had previously lived in a rural town near Mumbai and that she and her immediate family came to Australia in 2000 and that she was an Australian citizen. She said she still had some extended family in Mumbai. She told the Tribunal that she had sought counselling through a university counsellor who was a [professional] in order to help her with her [condition] after she had returned to Australia. The Tribunal raised with the witness whether she had any documentation in relation to the counselling. She indicated that she believed that she could obtain documentation and provide it to the Tribunal. She subsequently told the Tribunal that if she returned to India with her husband she feared harm from Muslim extremists in India on the basis that she had married a Sikh. The applicant said that he feared harm from Indian society in relation to honour killings because he would be a bad example and by inference would need to be punished for marrying outside his faith.
23. As indicated the Tribunal was provided with a number of documents by the applicant and his wife and apart from the marriage documentation and photo the Tribunal was also provided with further financial documents in relation to the operation of a joint account at [a] Bank. The Tribunal was also provided with further media in relation to honour killings in India. That documentation included a full copy of the article previously referred to entitled "honour killings: India's crying shame" which was dated November 2013. The Tribunal was also provided with a series of short Internet-based media articles which referred to honour killings in India and those reports referred to events in relation to honour killings in 2016 and 2015.
24. The applicant gave evidence to the Tribunal and confirmed his personal particulars and including he and his wife's employment in Australia. He told the Tribunal he feared harm if he returned to India from Sikh extremists and his family and from members of Indian society and in particular those people who managed village/community affairs in India. He claimed that he feared being killed if he returned to India because of his marriage. He told the Tribunal that he had not been able to produce his passport because it had been damaged when his wife inadvertently put it in the washing machine. He confirmed that he feared harm on the basis of his Sikh religion and that he had married outside his faith when he married his wife who was a Muslim. He said that his family lived in a village/small town about

[distance] by car from Jalandhar in the Punjab and that there were between 8000 and 10,000 people in that town.

25. The Tribunal asked the applicant about the practice of his Sikh religion and noted that the applicant was not wearing a turban. He said that he had been strict in India in practising his religion but he still goes to a temple in Australia and still practices in Australia but he is not strict in the practice of his religion.
26. He told the Tribunal that about 400 to 500 people had attended the wedding ceremony in India and that none of his wife's relatives had attended. He was asked about what happened when he told his father that his wife was a Muslim. He said his father slapped his face and that his wife was present when this occurred. The applicant said he thought his wife would be physically hurt on that occasion. The applicant said that apart from his parents there were other people in attendance on that occasion and that one of them was a police officer. He said there were other relatives and neighbours who were also present and that there were about 10 or 12 people present when this incident occurred. The applicant said his father had said words to the effect that he (the applicant) "had brought disgrace to the family" and that his father it also said words to the effect "I can hand you over to the police". The applicant said his father had some influence with Indian officials in their area. The applicant said that his father had said words to the effect "if you want to go back alive to Australia tell your wife to leave now and we can talk after that". The applicant said that other relatives and neighbours who were present also got involved and started making comments. He said his wife then went to their room and the applicant said he was worried that his wife might be physically hurt. The applicant said that his father had hit him and that his father had threatened him with being arrested.
27. He claimed his father said that he could save his wife's life by getting her to leave and he claimed that he thought his father would kill him and that his father threatened him. The applicant claimed that the total conversation with his family took place over around 30 minutes. The applicant claimed that he then went to speak to his wife and that she had wanted to go to the police (about the threats and the incident) but that the applicant did not think that was a good idea and that the police in India would only do something for money. The applicant had then contacted a relative in another town and arranged to go and stay with that relative. He claimed that relative was scared for his own safety when he discovered what had happened. He claimed that relative had spoken to the applicant's father and that the father had said he would kill the applicant and his wife or he would kill himself and that he could not accept the marriage. The applicant told the Tribunal that when he realised the type of identification that would be needed to support the registration of the marriage in India he realised that his wife's passport would disclose her full name and that his family would realise that his wife was a Muslim. That was part of the background information in relation to telling the applicant's family that his wife was Muslim.
28. The applicant told the Tribunal that he had spoken to his father since he returned to Australia and that he had spoken to him in telephone conversations in either April or May 2014 and late in 2014. Late 2014 was the last time the applicant spoke to his father. The applicant told the Tribunal that his father had threatened him. The applicant claimed on that occasion that his father had said words to the effect that if he returned to India "you are considered dead" and the applicant said he understood that he would be killed. The applicant claimed as well that his father said that if the father came to Australia he would kill the applicant. The applicant said that his father gave him two options and they were for him to leave his wife and return to India or that the applicant was to convert his wife but that the father did not want the applicant's wife to go to India. The applicant claimed that his father hated his wife.
29. The Tribunal asked the applicant about his delay in applying for a protection Visa after he returned to Australia in early March 2014. The Tribunal referred to the applicant's

immigration history and the Tribunal indicated that it appeared that the applicant was waiting for the outcome of a decision on his partner Visa application before he applied for a protection Visa. The applicant told the Tribunal that it was only after the partner Visa application was found to be invalid that he then spoke to a migration agent and found out about applying for a protection Visa. He told the Tribunal that he and his wife had been discussing the issues and that she was depressed and that things were "mixed up" after they returned from India and that she was also facing problems with her parents because of her marriage to the applicant. The Tribunal noted the comments in the delegate's record of decision (see page 6) that the applicant had agreed with the delegate that applying for a protection Visa was a last resort measure after all the other avenues of seeking to remain in Australia had been exhausted or had failed. The applicant had in responding to the Tribunal's concern referred to a one month delay that had previously occurred in applying for a partner Visa. The Tribunal responded by indicating that a delay in applying for a protection Visa could indicate that the applicant was not fearful of returning to India and did not fear harm if he returned to India.

30. The Tribunal asked the applicant what had happened when he had married the first time in Australia and had married a Christian. He said his family was not happy about that situation and that the same reaction had occurred on that occasion from his father but that the applicant was in Australia on that occasion and that he was told by his father that he had to convert his wife. He also told the Tribunal that when his brother had married the applicant's now wife his brother had not told the applicant's parents that he had married a Muslim. The applicant claimed that his brother had seen what had happened when the applicant had married his first wife in terms of his parents reaction and had decided not to tell the parents about his marriage to a person of the Muslim faith. The applicant said that the events that had occurred in India were much worse because he and his wife were physically in India when his parents discovered that his wife was a Muslim.
31. The Tribunal also raised with the applicant the delegate's findings that the applicant circumstances in India were not as he had claimed and that the applicant was not a credible witness. The Tribunal had also raised the findings by the delegate that was contained in the decision record in relation to the spouse Visa application arising out of the applicant's first marriage. On that occasion the delegate was not satisfied that the applicant on that occasion was in a genuine and continuing relationship and in essence that the relationship was a contrived relationship for the purpose of obtaining a Visa. The applicant said that the first marriage relationship was a genuine relationship but that it did not work out. The applicant's wife had earlier told the Tribunal that she had not been given an opportunity to provide evidence to the delegate about the marriage in India and what occurred with the applicant's family.
32. The Tribunal asked the applicant's wife what she would do if her husband had to return to India. She said that if she returned with him life would be a constant struggle and that she would be fearful for her life. The Tribunal noted that the applicant's wife's background was in Mumbai or as she told the Tribunal a small rural town outside Mumbai. She said that she and her husband could be tracked down if they relocated to Mumbai by his family and that she was also fearful about being a Muslim person married to a Sikh in India. The Tribunal during the course of the hearing indicated to the applicant's wife that country information contained in the DFAT country report for India dated July 2015 indicated that relocation within India was seen by the Department as a viable option for individuals seeking protection from discrimination or violence.
33. The applicant, in responding to a Tribunal question about the possibility of him relocating to avoid harm, told the Tribunal that he feared harm not just in the Punjab but that he feared harm everywhere in India and that the same problems existed everywhere in India (in relation to interfaith marriages) and that his wife did not want to go to India. The applicant's

response about relocation was brief and he essentially said he could not relocate to avoid harm and was not expansive addressing the issue.

34. In relation to state protection the applicant said that there was a risk in India and that the police were not accountable and that Sikh people might kill people in relation to religious issues and then the police might arrest them later. The Tribunal noted one of the media stories that had been provided referred to Indian authorities conducting a campaign against honour killings in some parts of India and that the Indian Supreme Court had said in 2010 that the death penalty should be given to those found guilty of honour killings (see French press agency report of 19 September 2013). The Tribunal indicated that press story did not suggest or indicate that the Indian state approved honour killings and that Indian authorities were prepared to take action in relation to honour killings. The Tribunal noted that information did not support the applicant's claims in relation to state protection issues in India in terms of the attitude of the Indian authorities.
35. The applicant also said that an option that was open to him if he was unsuccessful in relation to a protection Visa application was for him to return to India and in essence tell his parents that he had left his wife and he could then apply for permanent residency from India on the basis that he was married to an Australian citizen. The Tribunal noted that such an application would have to be considered and that permanent residency would not be automatically granted. The application would have to be assessed.
36. The applicant said that he had nothing further to raise in support of his claims and that he had said everything that he could say in relation to his claims.
37. The Tribunal raised with the applicant pursuant to S.424AA of the Act information that it had it would be a reason that would be a reason or part of a reason for affirming the decision under review. That information was contained in the earlier spouse partner Visa application that had been referred to during the Tribunal hearing. That application had been unsuccessful and the delegate on that occasion had not accepted that the applicant and his first wife were in a genuine relationship. The Tribunal said that information was relevant in the context of assessing the applicant's current claims in terms of his claims regarding events in India and in the context of assessing the applicant's credibility in relation to his current claims. That information might cause the Tribunal to not accept the applicant's current claims. The applicant was asked if he would like to comment or respond to that information. The applicant said that on that occasion he had only had a telephone interview with the delegate and he had difficulty understanding the delegate's decision. He said that his first marriage was a genuine relationship but it did not work out. The applicant was asked if he would like additional time to comment or respond further and the Tribunal allowed until 9 May 2016 for that to occur.
38. The Tribunal referred to country information contained in the DFAT country report for India dated 15 July 2015. The Tribunal noted that the Indian Constitution prohibited discrimination against any citizen on the grounds of religion. The Tribunal noted that some laws in India prevented religious conversions and some states have laws requiring the registration of religious conversions. A 2014 report by the US commission on International religious freedom stated that these laws had resulted in few arrests no convictions but had created a hostile atmosphere for religious minorities and in particular Christians. The Department assessment in the report was that although India is a complex and diverse and large country that overall there is a low level of official discrimination on the basis of religion and the extent of that discrimination varies considerably between Indian states. The report refers to Sikh practitioners and notes the roles that many Sikh people have carried out in Indian society and Indian life. The Department assessment is that overall Sikhs in contemporary India have no heightened risk of official or societal discrimination beyond that experienced by the broader community. The report also refers to people of the Muslim faith in India and in

summary the Department assessment is that there is a low level of official discrimination against Muslims in India particularly in relation to police and security forces interacting with the Muslim community. The report indicates that there is a moderate level of societal discrimination against Muslims across India and this can be partly explained because of the communities relatively low socio-economic status. The Tribunal referred to interfaith marriage issues referred to in the report. And noted that India is officially a secular and multiethnic country and as such interfaith and intercast marriages are legal. The report however also notes that there is significant social pressure for individuals to marry within their own caste and or religion. Statistics referred to in the report indicated that interfaith marriages were overall in percentage terms relatively small in number in the context of the overall Indian population. The report refers to “honour killings” committed by the families and communities of those involved in interfaith and intercast relationships and that these are particularly prevalent in villages and small towns in northern India.

39. The report indicates that it is estimated that at least 1000 honour killings take place each year in India. The report notes that India's Constitution recognises certain rights for women. The report notes that internal relocation is guaranteed under the Indian Constitution and that Indian citizens have the right to move freely throughout the territory of India and the right to reside and settle in any part of the territory of India subject to reasonable restrictions in the interests of the sovereignty and integrity and security of the state. The report notes that there is a very high rate of internal mobility within India but that there are a number of practical factors that might limit mobility and these include a lack of financial resources and employment opportunities and language barriers. The report notes that despite these difficulties millions of Indians successfully relocate within India either temporarily or permanently every year and that in general the Department assessment is that there are a range of viable internal relocation options for individuals seeking protection from discrimination or violence. The report also refers to the prevalence of document fraud which is described as a significant industry in India and includes false documents produced for immigration purposes. The applicant responded to the country information by saying that he did not know how his wife could live in India and that they were also planning to have a child.
40. The Tribunal referred to concerns that it had about the applicant's claims and said that overall it had a concern that the applicant had a well-founded fear of harm if he returned to India. The Tribunal referred to its concern about the delay by the applicant in applying for a protection Visa and that aspect had been discussed during the Tribunal hearing. The Tribunal also referred to its concern about the delay by the applicant and his wife in getting married in Australia after the Indian marriage ceremony and that aspect had been discussed during the Tribunal hearing. The Tribunal further noted that aspects of the applicant's claims were not supported by the DFAT country information that had been referred to by the Tribunal and that some of the media articles that had been provided to the Tribunal by the applicant indicated that the Indian state was prepared to take action in relation to honour killings. The Tribunal referred as well to the country information that indicated that internal relocation in India was a viable option for people seeking to avoid discrimination and violence. That aspect had been discussed with the applicant and his wife during the Tribunal hearing. The applicant in response said that he had considered that he and his wife were married and that his wife was also trying to get her parents to come to their wedding and that had delayed the applicant and his wife being married in Australia. The Tribunal allowed until 9 May 2016 for any further evidence or submissions to be provided by the applicant in relation to his claims. The Tribunal received further documentation from the applicant after the hearing. The documentation consisted of a statement from the applicant's wife which was dated 1 May 2016. In that statement, in summary, the applicant's wife referring to her family situation in Australia and that she had been a victim of domestic violence when living with her family and that she had had to leave the family home. In summary she also referred to her marriage to the applicant's brother and that marriage had broken down. She referred to having received counselling to cope with [her condition]. She referred to forming a

relationship with the applicant and referred to the decision to participate in a marriage ceremony in India. She referred to having not informed the applicant's parents that she was of the Muslim faith and problems arose a few days after the wedding when a discussion had taken place about registering the marriage with Indian authorities. The need for registration meant that identity and other documents would have to be disclosed which would disclose to the applicant's parents that she was a Muslim. She referred to having informed the applicant's parents about her faith and she said that her father-in-law had hit her husband and "looked outrageously at me".

41. She claimed that her in-laws were shocked and angry and that she was concerned for her safety as was her husband. She said she locked herself in a bedroom in the house while an argument took place between her husband and other members of his family and that her husband eventually told her that they would have to leave. She said her husband had said that the family believed he had brought shame to his family and disgrace because he had married out of his faith. She referred to having gone to live with a distant relative for a few days and that her husband had tried to speak to his family. She said that the applicant's parents had refused to talk to him and "threatened him with life". She said she and her husband were afraid while they remained in India and then had returned to Australia in March 2014. She referred to having been told that the partner Visa that she had lodged in relation to her husband had been invalid and that she and her husband were upset with that news. She then referred to having been told by their migration agent that her husband should apply for a protection Visa because of what happened in India. She said that she was depressed about the situation and continued to receive counselling. She said that she was having difficulties with her parents in Australia and that she was trying to get them to attend a marriage ceremony in Australia between her and the applicant but was unsuccessful. She referred to a decision that she and her husband had made to have a child. She referred to being fearful about returning to India and that if her husband had to return to India she would not be able to cope.
42. There was also a report from a counsellor from [her] University dated [May] 2016 in relation to the applicant's wife. In summary the report referred to the applicant's wife receiving counselling which had commenced in May 2010 and that had occurred in the context of having to leave her family home and live in a refuge. The report indicated that the applicant's wife had attended eight face-to-face appointments for counselling and had required support for symptoms of [a condition] and that there had also been numerous phone and email contacts. The report indicated that more recent appointments had focused on the difficulties facing her and the applicant because of wider family issues and the difficulties caused because of their marriage which involved different religious backgrounds. The report indicated that the applicant's wife because of her difficulties had required a lot of additional support during her studies.
43. A third document was forwarded which was a short report from a medical practitioner in relation to the applicant and his wife. That was dated [in] May 2016. The medical practitioner refers to having known the applicant and his wife for many years and he regards them as a genuinely married couple. That report in summary refers to the applicant's wife suffering [a condition] and seeing a counsellor and also refers to the applicant and his wife seeking to have a family.

44. CONSIDERATION OF CLAIMS AND EVIDENCE

45. On the basis of the materials and information provided to the Department and available to the Tribunal the Tribunal accepts that the applicant is an Indian citizen and his identity is as he claims it to be. The Tribunal, without any evidence to the contrary, accepts on the basis of the information and materials provided that the applicant does not have a right to enter or reside temporarily or permanently in any other country apart from India. The Tribunal

accepts that India is the applicant's country of nationality for Convention purposes and is the receiving country for complementary protection purposes.

46. The applicant claims to fear harm are referred to elsewhere in these reasons and in summary his fears are based on his interfaith marriage to his wife. He is of the Sikh faith and his wife is of the Muslim faith. The applicant and his wife gave evidence that they participated in a Sikh marriage ceremony in India and that his wife did not disclose to the applicant's family that she was of the Muslim faith. That marriage was not registered with Indian civil authorities. The applicant's parents and family became aware of the interfaith marriage. The applicant and his wife gave evidence to the Tribunal, which has been referred to elsewhere in these reasons, that when the applicant's father became aware of the interfaith marriage he threatened both the applicant and his wife. The applicant claimed that he feared harm if he returned to India from his family and Indian society and religious extremists within the Sikh community. The applicant's wife who is an Australian citizen also told the Tribunal that she was fearful that if they returned to India she and her husband might suffer harm from extremists in the Muslim community because of the interfaith marriage. The applicant and his wife subsequently participated in a marriage ceremony in Australia and provided documentation to the Tribunal in relation to that marriage.
47. The Tribunal has considered the credibility of the applicant's claims and his credibility in the context of his claims. The Tribunal after considering the totality of the evidence that has been referred to accepts that the applicant and his wife are credible witnesses and that they fear harm if the applicant returned to India. The applicant and his wife gave detailed evidence to the Tribunal about the events and the sequence of events that occurred after the applicant informed his family that his wife was of the Muslim faith. The Tribunal after considering the totality of the evidence also accepts that the applicant and his wife have a committed and genuine relationship and that they engaged in marriage ceremonies in India and Australia to demonstrate that commitment. The Tribunal after considering the totality of the evidence and its assessment of their credibility also accepts the applicant's and his wife's evidence regarding the cause of the delay by them in getting married in Australia after they returned from India and also accepts the applicant's explanation for the delay in applying for a protection Visa after he returned to Australia from India.
48. The Tribunal after considering the overall evidence of the applicant and his wife is prepared to accept that the applicant and his wife took part in a Sikh wedding ceremony in India. The Tribunal is also prepared to accept that the applicant and his wife were subsequently threatened with harm by the applicant's father after he discovered the interfaith marriage.
49. The Tribunal has considered the evidence and the applicant's claims and the available and relevant country information referred to in the DFAT country report for India dated July 2015. The Tribunal has also considered the country information provided by the applicant to the Tribunal and which has been referred to elsewhere in these reasons. That information principally deals with the subject of honour killings in India. The Tribunal accepts the information contained in the DFAT country report which indicates that there is significant social pressure in India for individuals to marry within their own caste or religion. The report indicates that it is estimated that about 1000 honour killings take place each year in India and that is particularly prevalent in villages and small towns in northern India. The report indicates or suggests to the Tribunal that honour killings are a more significant problem in rural India. The country information/media information provided by the applicant is in general terms consistent with the information contained in the DFAT country report and indicates honour killings continue to occur in parts of India and those media reports are also suggestive of it being more prevalent in villages and smaller towns in India (see honour killings: India's crying shame, Aljazeera, 28 November 2013). Both the applicant and his wife claimed they came from smaller towns rather than large urban centres. That aspect has been referred to elsewhere in these reasons. The Tribunal also notes the media report

provided by the applicant from the French press agency dated 19 September 2013 which indicates that the Indian Supreme Court in 2010 said that the death penalty should be given to those found guilty of honour killings. That report indicates that the Indian state in terms of the judicial system at least does not support or condone honour killings. That media report also refers to police in one state in India conducting a campaign against honour killings.

50. The applicant claimed that he would not be able to obtain effective state protection anywhere in India and claimed that he could not relocate to avoid harm in India.
51. The Tribunal accepts on the evidence that the applicant would be at risk if he returned to India with his wife. He told the Tribunal during the hearing that a possible option for him was to return to India without his wife and tell his parents that he had left his wife and then apply for permanent residency in Australia on the basis of his marriage to his wife who was an Australian citizen. The evidence indicates or suggests to the Tribunal that the risk to the applicant in returning to India is significantly greater if he returned with his wife to his home area. His wife told the Tribunal that in essence she could not bear to be separated from her husband and the overall evidence suggests that the applicant's wife would want to return to India with the applicant rather than separate from him. The Tribunal is prepared to accept the applicant's evidence that his father is a person of influence within his local area in India and that influence extends to the local police. The Tribunal is prepared to accept the applicant's evidence that his father suggested or threatened that he could have the applicant arrested and that a police officer was in attendance at the time when the threat was made to the applicant. In those circumstances there has to be some doubt that the applicant would be able to obtain effective state protection in his local area if he came under threat from his family and in particular his father. The Tribunal's overall assessment of the evidence and the country information is that the applicant would face a real chance of serious harm if he returned to his home area in the Punjab either now or in the reasonably foreseeable future on the basis of his interfaith marriage. The Tribunal accepts that the applicant has a well-founded fear of harm on this basis if he returned to India either now or in the reasonably foreseeable future.
52. The Tribunal has considered the overall circumstances of the applicant and the evidence and available and relevant country information. The Tribunal's overall assessment of the evidence and the country information suggests that the applicant could avoid harm if he relocated elsewhere in India and did not return to his home area. The DFAT country report that has been referred to indicates that the Department assessment is, that notwithstanding a range of difficulties, that there are a range of viable internal relocation options in India for individuals seeking protection from discrimination and violence. The difficulties associated with relocation include language barriers and a lack of documentation or a lack of family or community support as well as financial and employment difficulties that might arise in considering relocation. Some of the issues that are referred to in the report include difficulties for victims of familial crime in successfully relocating. That is because in those cases those victims may have difficulties due to the need to provide details of their husbands or fathers name in order to access government services and accommodation. The applicant is an educated person who holds a degree and who speaks reads and writes English and Hindi and Punjabi (according to his protection Visa application and his evidence to the Tribunal). He has undertaken further studies in Australia and has obtained employment in Australia. In those circumstances the Tribunal believes that if the applicant returned to India and feared harm in his local area or hometown that it would be reasonable for him to relocate elsewhere in India to avoid that harm which principally comes from his father. He claimed to fear harm from his family and from Indian society more generally and from Sikh extremists because of his interfaith marriage. However his evidence about his fear of harm essentially focused on his fear that he would be harmed by his father. The country information and media information provided by the applicant indicates that the risk of harm in relation to honour killings comes principally from the families and communities of those

involved in interfaith and intercaste relationships. The country information does not indicate or suggest to the Tribunal that people who relocate away from those families or communities are necessarily at risk because of interfaith marriages. In that respect the Tribunal's assessment of the information before it is that the risk of honour killings arising appears to be essentially linked to the families and local communities. The Tribunal's assessment is that it is not an issue that would affect the applicant and his wife and place them at risk if they were physically and geographically removed from the family and that local community.

53. The evidence provided by the applicant also indicates to the Tribunal that the influence of his father appears to be limited to his father's local community and that includes apparent influence with police authorities in that community. There is no suggestion on the evidence before the Tribunal that the applicant's father exercises influence outside that community. Although the applicant claimed to fear harm from wider Indian society and from Sikh extremists because of his interfaith marriage he really did not provide more evidence and information about his fears in that respect over and above the media stories provided to the Tribunal. The Tribunal's assessment is that the applicant essentially fears harm from his father because of his interfaith marriage.
54. The applicant's wife claimed that if she and her husband returned to India that they would be at risk from Muslim extremists because of their interfaith marriage. The Tribunal believes that the same issues apply in relation to that claim in the context of available and relevant country information as has been considered in relation to the applicant's claims. The DFAT country report indicates that the department assessment is that there is a low level of official discrimination against Muslims in India particularly in relation to police and security forces interaction with that community.. The applicant's wife said her family came from a rural village or small town outside Mumbai. The country information available to the Tribunal and that has been referred to indicates or suggests to the Tribunal that there is a significantly greater risk of honour killings occurring in smaller rural villages and towns than in larger cities. Country information also indicates that there is a very high rate of internal mobility within India. In those circumstances the Tribunal finds after considering the applicant's education and personal circumstances that the applicant (and his wife) if he feared harm in his home area should he return to India either now or in the reasonably foreseeable future could avoid harm by relocating elsewhere in India and to a large urban area in India. The Tribunal finds that based on its assessment of the totality of the evidence and the information available to it that relocation is a reasonable option for the applicant and his wife should they return to India either now or in the reasonably foreseeable future. The applicant's response to the relocation issue was brief when it was raised with him by the Tribunal. He essentially said that the problems he faced in the Punjab in his home area were the same everywhere in India and that his wife did not want to go to India. As indicated elsewhere in these reasons there is no suggestion that the applicant's father exercises any influence with authorities or others outside the family home area in the Punjab. The Tribunal does not accept after considering the totality of the evidence and the country information that has been referred to that the applicant or his wife would face a real chance of serious harm because of their interfaith marriage if they relocated to a large urban area outside the Punjab. As well the country information suggests employment opportunities, particularly for well-educated people like the applicant and his wife, would presumably be better in large urban areas. The applicant and his wife indicated that they were thinking of starting a family and this was also referred to in a medical document provided to the Tribunal on their behalf. Relocation to a large urban area outside the Punjab would also presumably give access to a wider range of services in that situation. There was no suggestion made to the Tribunal that there was any legal impediment to the applicant's wife returning to India.
55. The Tribunal also finds based on the DFAT country report that India has arrangements in place to provide security and police services throughout India and that each state and union territory maintain separate police forces and that there is a system of laws and procedures in

place in India that enables reporting of crimes and investigation of crimes. The DFAT report indicates that the capacity of India's police forces is limited by poor infrastructure and insufficient personnel and inadequate training and a range of other factors. However the Tribunal's overall assessment is that the applicant could seek state protection if he feared harm and if he relocated and faced harm after that relocation. As indicated the evidence suggests to the Tribunal that his father's influence relates only to the small town or village which is the family home and there is no evidence before the Tribunal that suggests that the applicant's father has wider influence with Indian authorities or others away from that geographical area. The Tribunal notes the evidence that was given by the applicant and his wife that they had discussed reporting threats from the applicant's father to police when they were in India but that the applicant did not think it was a good idea to do so for a variety of reasons. The Tribunal's overall assessment of the country information and the media information that has been provided to it regarding effective state/police protection is that any suggestion of police disinterest or inactivity in pursuing honour killings is more likely to be an issue in rural areas and in small villages rather than in large urban centres.

56. The country information that has been referred to indicates that some parts of the Indian State's authorities regard honour killings seriously and that does not suggest that honour killings are condoned across the broad spectrum of Indian society . That aspect is not supportive of the applicant's claims to fear harm from wider Indian society because of his interfaith marriage. The Tribunal's overall assessment of the evidence and country information also does not suggest to the Tribunal that the applicant would face a risk of harm from Sikh extremists because of his marriage away from his immediate home area in the Punjab. The applicant indicated that while he acknowledged the police may subsequently investigate and arrest a perpetrator that activity would be more likely to occur after the death of a person in relation to an honour killing as opposed to taking preventative action. However it appears to the Tribunal on its assessment of that evidence that the applicant's concerns in that regard were again linked to his father's apparent influence in his local community and that influence included the police (based on the applicant's evidence to the Tribunal). As indicated elsewhere in these reasons there is no evidence before the Tribunal that suggests or indicates that the applicant's father has influence outside his immediate local community in his home area. The Tribunal accepts that if the applicant had to return to India that he would return with his wife . In those circumstances the Tribunal considers that the applicant and his wife could avoid harm by relocating to a large urban area in India outside the Punjab and that would be reasonable for them to do so having regard to the totality of the evidence and information before the Tribunal . As indicated the Tribunal finds after considering the totality of the evidence and country information that it would be safe and reasonable for the applicant and his wife to relocate to another large urban area in India outside his home state of the Punjab.
57. The Tribunal after having considered the applicant's claims both individually and collectively finds that if the applicant returned to India either now or in the reasonably foreseeable future that the applicant could avoid a real chance of serious harm if he relocated to another part of India.
58. Having concluded that the applicant does not meet the refugee criterion ins.36(2)(a), the Tribunal has considered the alternative, complementary protection criterion in s.36(2)(aa) and has had regard to PAM3 refugee and humanitarian – complementary protection guidelines. In light of its earlier reasons in terms of there being a real chance that if he returns to his home area he would be seriously harmed by a member of his family or a member of that community because of his interfaith marriage, the Tribunal considers there are substantial grounds for believing there is a real risk he will suffer significant harm in that way in his home area of the Punjab. However, in light of its earlier reasons with regard to there not being a real chance of him being seriously harmed for those reasons outside his community in the Punjab, the Tribunal considers there are not substantial grounds for

believing that there is a real risk he will suffer significant harm in that way outside his community in the Punjab. In making this decision the Tribunal has considered and does not accept that there are substantial grounds for believing that there is a real risk he will be subjected to violence for those reasons that would amount to torture, or cruel and inhuman treatment or punishment, or to degrading treatment or punishment, as defined in the Act.

59. In the context of the consideration of relocation the applicant, as indicated, has been educated in India and holds a degree. He has worked in Australia and has apparently been able to adapt to life in a foreign country. He has undertaken further studies in Australia. He can speak English, Punjabi and Hindi. The applicant's wife has also undertaken higher-level studies at university in Australia. She also has employment experience. The Tribunal accepts that the applicant and his wife may find transitioning to life in another part of India difficult. However the Tribunal after having considered the totality of the evidence and the information before it and for all the reasons that have been considered and discussed considers that it would be reasonable for the applicant and his wife to relocate to a large urban area in India where he would not face a real risk that he would suffer significant harm. As indicated elsewhere in these reasons a large urban area in India is likely to offer the applicant and his wife better employment opportunities and also access to a wider range of services and in the context that they are thinking of starting a family.
60. Having considered the applicant's circumstances singularly and on a cumulative basis, the Tribunal finds that there are no substantial grounds for believing that as a necessary and foreseeable consequence of him being removed from Australia to India that there is a real risk that he would suffer significant harm.
61. Overall Summary
62. For the reasons given above, the Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
63. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
64. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

65. The Tribunal affirms the decision not to grant the applicant a Protection visa.

James Jolliffe
Member